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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/612,641      | 07/01/2003  | Cynthia Dianne Maas  | 19,448              | 3690             |

23556 7590 06/20/2006

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| EXAMINER |
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HILL, LAURA C

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| ART UNIT | PAPER NUMBER |
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3761

DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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| APPLICATION NO/<br>CONTROL NO. | FILING DATE | FIRST NAMED INVENTOR /<br>PATENT IN REEXAMINATION | ATTORNEY DOCKET NO. |
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20060612

DATE MAILED:

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Commissioner for Patents

|                              |                 |              |  |
|------------------------------|-----------------|--------------|--|
| <b>Office Action Summary</b> | Application No. | Applicant(s) |  |
|                              | 10/612,641      | MAAS ET AL   |  |
|                              | Examiner        | Art Unit     |  |
|                              | Laura C. Hill   | 3761         |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2006.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Response to Arguments***

Applicant's arguments with respect to claims 1-29 that are based on the newly submitted amendments (see Remarks pages 10-12) have been considered but are moot in view of the new ground(s) of rejection as discussed below.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glaug et al. (US 5,599,417; herein 'Glaug') in view of Rajala et al. (US 5,940,887; herein 'Rajala'). Regarding claims 1-3, 10-11, 16, and 22-29 Glaug discloses disposable training pant absorbent garment 20 having a closed construction (column 5, lines 17-32, figure 1) comprising:

a) A stretchable front waist region/panel 52 having a first waist elastic 66 bonded to the outer cover 34 along a first lateral end 40 to enhance fit and performance (column 5, lines 55-57 and column 6, lines 34-36) and extending completely across the front panel width (column 4, lines 7-16 of Mesek et al. US 4,388,075 which is incorporated by reference into Glaug at column 13, lines 50-52) and a second leg elastic 64 secured along a second end 4 (column 6, line 33-45 and figure 2);

b) A stretchable back waist region/panel 54 discontinuous from front panel 52 (figure 2) and having third waist elastic 66 secured to outer cover along first end 60 (column 5, lines 55-57, column 6, lines 34-36, column 10, lines 30-35 and figure 2) and

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extending completely across the back panel 54 width (column 4, lines 7-16 of Mesek et al. US 4,388,075 which is incorporated by reference into Glaug at column 13, lines 50-52), and fourth leg elastic 64 secured along a second end 4 (column 6, line 33-45 and figure 2);

c) An absorbent assembly including an absorbent 100 (column 7, lines 58-60 and column 13, lines 20-30) disposed between liquid permeable top sheet/liner 110 (column 8, lines 14-16) and impermeable containment trough 70 (column 6, lines 52-54 and figure 3), said absorbent assembly being secured to the inner surfaces of the front and back panels 52, 54 respectively (figure 2); and

d) A pair of non-refastenable seams 49 that form a pant-like undergarment having waist opening 30 and leg openings 32 (column 5, lines 29-32 and lines 40-47 and figure 1), said first and third elastics 66 creating a waist band on an outer surface and said second and fourth elastics 64 creating a pair of leg bands on the inner surface adjacent the pair of leg openings 32 (figure 1). Glaug *does not expressly disclose* back panel fourth leg elastic band having a greater stretching force than front panel second leg elastic band.

**Rajala** discloses a disposable pant-like garment subassembly 10 comprising (column 3, lines 53-63): a) stretchable front body portion/panel 16 having front/second leg elastic 50 secured along a second end (column 4, lines 8-16); b) stretchable back body portion/panel 20 having back/fourth elastic band 48 secured along a second end (column 4, lines 8-16 and figure 1); c) an absorbent pad assembly laid in crotch portion 24 and capable of being folded (column 4, lines 55-59); and d) a pair of seams [seams

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include the outermost longitudinal edges of front and back panels] that are capable of joining the front and back panels together to form leg openings 44, 46 and a waist opening (column 4, lines 23-28 and figure 1), said second and fourth elastics 50, 48 located adjacent the pair of leg openings 44, 46 (figure 1), and said back/fourth elastic 48 is under 1-3 times higher elongation and contraction forces (higher elongation also has a greater contraction force) than front/second elastic 50 to keep seat of garment from creeping up during movement and cause less tightness in the groin area during use (column 6, lines 34-59). One would be motivated to modify the elastics of Glaug with the varying tension elastics of Rajala for improved article fit during use since the references disclose disposable pant-like absorbent wearing articles. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the leg elastics in the front and back panels, thus providing a back panel fourth leg elastic with a greater stretching force than the front panel second leg elastic.

Regarding claims 4-5 and 17 Glaug discloses elastics secured to the inner layer/second and fourth leg elastics have a greater elongation/stretching and contraction force than elastics bonded to outer layer/first and third elastics (column 4, lines 12-16, column 5, lines 23-51 of Mesek US 4,938,754 incorporated by reference into Glaug at column 13, line 51) and thus the 4<sup>th</sup> leg elastics inherently have a greater contraction force than the waist band where the first and third elastics are attached.

Regarding claims 6-7 Glaug discloses fourth elastic in the back panel having a greater elongation than the front panel first and third waist elastics as discussed above with respect to claims 4-5. Thus the fourth elastic would inherently have a greater

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stretching and contracting force than the front panel and the back panels where the first and third elastics are contained.

Regarding claim 8 Glaug discloses first elastic band 66 is located between the side edges of the front panel 52 and the third elastic 66 is located between the side edges of back panel 54 as discussed above with respect to claim 1 (see also figures 1-2).

Regarding claims 9 and 12-13 Glaug discloses second and fourth elastics are overlapped by the absorbent assembly 19 (figures 2 and 7 of Mesek US 4,938,754 incorporated by reference into Glaug at column 13, line 51).

Regarding claim 14 Glaug discloses a lesser or greater number of elastic strands in the leg bands 46 than in the waist elastics (column 8, lines 14-17 and column 9, lines 47-52 of Van Gompel et al. US 4,940,464 incorporated by reference into Glaug at column 13, lines 45-47).

Regarding claim 15 Glaug discloses the waist band contains the same number of elastic strands as each pair of leg bands (figure 2 of Mesek US 4,938,754 incorporated by reference into Glaug at column 13, line 51).

Regarding claims 18-20 Glaug discloses the waist band containing elastics 66 is wider than each of a pair of leg bands that contain elastics 64 (figure 2), equal to the leg band width (figure 2 of Mesek US 4,938,754 incorporated by reference into Glaug at column 13, line 51), or less than the width of the leg bands (figure 7 of Van Gompel et al. US 4,940,464 incorporated by reference into Glaug at column 13, lines 45-47).

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Regarding claim 21 Glaug does not expressly disclose a percent elongation within the value ranges claimed. The percent elongation is a result effective variable since it is a result of the materials used for the final diaper product [Glaug discloses the inner elastic elements have been pre-stretched to 80 percent elongation while the outer elastic elements have been pre-stretched to 70 percent elongation and that the difference in degree of elongation will vary with the specification of the materials used in their configuration within the final diaper product (column 5, lines 41-51 of Mesek US 4,938,754 incorporated by reference into Glaug at column 13, line 51).] It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Glaug with the percent elongation values claimed for improved performance, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the



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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura C. Hill

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Examiner

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LCH

*LCH*

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

*Tatyana*